Supreme Court of the United States

OCTOBER TERM, 1949.

No. 438.

ORDER OF RAILWAY CONDUCTORS OF AMERICA, an unincorporated Association, *Petitioner*,

v.

SOUTHERN RAILWAY COMPANY, a corporation organized and existing under the laws of the State of Virginia, *Respondent*.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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STATUTES.

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No. 438.

ORDER OF RAILWAY CONDUCTORS OF AMERICA, an unincorporated Association, *Petitioner*,

v.

SOUTHERN RAILWAY COMPANY, a corporation organized and existing under the laws of the State of Virginia, *Respondent*.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Opinions of the Court Below.

The first opinion of the Supreme Court of South Carolina in this case is reported in 210 S. C. 121, 41 S. E. (2d) 774, and is set forth in the record at pages 31-43. The second opinion has not yet been officially reported, but is reported in 54 S. E. (2d) 816, and is set forth in the record at pages 557-571.

Jurisdiction of This Court.

The petitioner seeks to invoke the jurisdiction of this Court under Section 1257(3) of Title 28, United States Code. As the validity of no statute of the United States

or of South Carolina has been questioned, presumably the petitioner is claiming some title, right, privilege or immunity under the statutes of the United States.

Statutes Involved.

The petitioner rests its case on the provisions of the Railway Labor Act, 45 U. S. C. § 151 *et seq.*, while the respondent contends that the suit falls squarely under the provisions of the declaratory judgment act of the State of South Carolina, § 660, Code of Laws of South Carolina, 1942, as was held by the South Carolina Supreme Court in its two unanimous opinions.

Statement of the Case.

This action was instituted in the Court of Common Pleas for Charleston County, South Carolina, against the petitioner by Southern Railway Company in July, 1945, under the declaratory judgment act of South Carolina, Code § 660, for the purpose of obtaining a construction of a written contract between the plaintiff, respondent here, and the petitioner, Order of Railway Conductors of America. The petitioner attempted to remove the case to the United States District Court, but the case was remanded for lack of a federal question. *Southern Railway Co.* v. *Order of Railway Conductors*, 63 F. Supp. 306.

The question presented by the complaint is whether industrial switching movements on an industry track at Pregnall, South Carolina, an intermediate point on plaintiff's line between Charleston and Branchville, South Carolina, are part of the service trips of conductors of local freight trains between those points, as contended by plaintiff and held by the courts below; or whether, as contended by petitioner, the conductors are entitled to a full extra day's pay for performing this incidental and customary switching service. (R. 1-2).

In addition to its answer, raising similar defenses, the petitioner filed a demurrer to the complaint based solely on the Railway Labor Act (45 U. S. C. § 151 *et seq.*) and which alleged that the suit is one involving a dispute concerning the application and interpretation of a collective bargaining agreement between plaintiff and defendant which is wholly within the terms of the Railway Labor Act; that the Railway Labor Act provides the sole and exclusive means and procedure for settling such disputes and that consequently the dispute is not within the jurisdiction of the courts of South Carolina. The demurrer also was based on a contention that the court, in the exercise of its discretion, should not attempt to hear the case because of the remedy provided by the Railway Labor Act. (R. 25-29). The trial court sustained the demurrer (R. 29-31), but the Supreme Court of South Carolina reversed the order in its opinion reported in 210 S. C. 121, 41 S. E. (2d) 774 (R. 31-43), holding that "the Railway Labor Act did not oust the courts of jurisdiction to interpret an agreement between a carrier and its employees, even where the dispute with respect to the agreement was one which, under the Act, might have been, but was not, submitted to the National Railroad Adjustment Board". (R. 38). The court in doing so relied on the decision in *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630, as controlling.

Following the reversal the case came on for trial in the court of common pleas at Charleston, South Carolina, at which time extensive evidence was introduced by both sides. (R. 50-477). Thereafter, on August 30, 1947, the trial court filed its decree awarding plaintiff the declaratory judgment prayed in its complaint. (R. 512-528). The facts established by the testimony are so fully reviewed in the trial court's decree that we deem it unnecessary to repeat them here. We respectfully refer the Court to the decree for a full statement of all the pertinent facts. (R. 512-528).

Inasmuch as the petitioner mistakenly states that the dispute was still in negotiation, it is pointed out that not

only did the complaint allege that the claims had been appealed to the highest officer of the carrier and formally rejected, but the trial court also so specifically found. (R. 515). The record therefore shows that negotiations and conferences had been completed as contemplated by the Railway Labor Act, and nothing remained to be done to enable the parties to submit the dispute to the courts or the Adjustment Board, as they, or either of them, might elect.

Moreover, as later pointed out by the Supreme Court of South Carolina, it was shown by the testimony that the dispute was not submitted by petitioner to the National Railroad Adjustment Board until after this suit was brought and answer had been filed by the defendant-petitioner.

Petitioner in due course appealed from the final judgment of the trial court to the Supreme Court of South Carolina and again renewed its objections and exceptions under the Railway Labor Act. (R. 529-535). The South Carolina Supreme Court, again in a unanimous decision, affirmed the final judgment and decree for the reasons stated by the trial court in its decree, which was ordered reported. (R. 557-571).

Question Presented.

Although petitioner states the question presented by its application in seven different ways (Petition, pp. 8-9) the only substantial issue involved is whether the South Carolina Supreme Court correctly applied the decision in *Moore v. Illinois Central R. Co.*, 312 U. S. 630 when it held that:

> "* * * the Railway Labor Act did not oust the courts of jurisdiction to interpret an agreement between a carrier and its employees, even where the dispute with respect to the agreement was one which, under the Act, might have been, but was not, submitted to the National Railroad Adjustment Board. * * *" (R. 38).

ARGUMENT.

The respondent submits that a writ of certiorari should be denied in the exercise of the Court's discretion for petitioner's failure to show a special and important reason therefor. In the following argument it will be shown (1) that the only federal question involved in this case was decided in full accord with the applicable decisions of this Court as to the proper construction of the provisions of the Railway Labor Act; (2) that the decision is not in conflict with the decision in *Order of Railway Conductors* v. *Pitney*, 326 U. S. 561; (3) that there is no conflict between the decisions of the state courts and the federal courts; and (4) that there has been no departure from the accepted and usual course of judicial proceedings requiring a review by this Court in the national interest.

I.

The South Carolina Supreme Court Was in Complete Accord With the Applicable Decision of This Court When it Followed Moore v. Illinois Central R. Co., 312 U. S. 630.

The very question which petitioner here seeks to raise was decided by this Court on March 31, 1941 in *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630. There it was squarely held that the procedure before the National Railroad Adjustment Board was not an exclusive remedy and that a party was not compelled to present its claim to such Board, but had the choice of resorting to a Court of competent jurisdiction in the first instance. It was also held therein that the party need not seek an adjustment of the controversy as provided in the Railway Labor Act as a prerequisite to the bringing of an action in the state court.

The decision in the *Moore Case* has never been questioned by this Court or modified in any respect, but in fact was followed in *Washington Terminal Co.* v. *Boswell*, 124 F.

(2d) 235, affirmed 319 U. S. 732, where Associate Justice Rutledge writing for the United States Court of Appeals for the District of Columbia said:

> "* * * The decision (Moore v. Illinois Central R. Co., 312 U. S. 630) establishes that in such circumstances the Act has neither excluded the general jurisdiction of the Courts nor made exhaustion of the administrative remedy prerequisite to its exercise, for decision of controversies which might be determined by the statutory method. At the threshold of controversy accordingly, the disputants have alternate routes which they may follow. One is entirely judicial without regard to the Railway Labor Act. The other is administrative and judicial, according to its terms." (p. 238).
>
> * * * * * * * * * *
>
> "The foregoing considerations are reinforced by the fact that the carrier under the decision in *Moore* v. *Illinois Central R. R., supra*, can bring its suit on the contract, independently of the statute, prior to the time when the dispute is submitted to the Board. Until then, at least, it has its election to pursue the exclusively judicial remedy or to follow the administrative and judicial one provided by the Railway Labor Act. * * *" (p. 249).

Washington Terminal Co. v. *Boswell, supra*, was an action for a declaratory judgment brought by the railroad employer just as is the case here. The court did not hold that the form of action was not proper or that the action could not be brought by any party to the dispute. The ground of dismissal was that the dispute had already been submitted to the Adjustment Board prior to the institution of the suit. Here, however, the record is clear that the jurisdiction of the South Carolina courts had been invoked by the respondent months before the petitioner sought to submit the dispute to the Adjustment Board. It is thus seen that the South Carolina courts have decided this case in complete accord with the applicable decisions of this Court, as well as a multitude of decisions of both federal

and state courts which have consistently followed the *Moore Case*.*

Notwithstanding the fact that the courts have consistently followed the *Moore Case* in suits of this kind, the petitioner suggests that while the language used by Mr. Justice Black in that case was applicable to the situation there before the court, it "was not intended to be applicable and was not directed toward a suit between a rail carrier and the representative of its employees concerning interpretation of the collective agreement, the subject matter of which directly infringes on the jurisdiction of the Adjustment Board." (Petition pp. 14-15). But this argument overlooks the status of a collective bargaining agent such as petitioner in the case at bar in handling matters submitted to the Ad-

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* See for example:

Adams v. *New York, C. & St. L. R. Co.* (C.C.A. 7, 1941), 121 F. (2d) 808;

Oil Workers Inter. Union, etc. v. *Texoma Nat. Gas Co.* (C.C.A. 5, 1945), 146 F. (2d) 62, *cert. den.* 324 U.S. 872, rehearing den., 325 U.S. 892;

Berryman v. *Pullman Co.* (D.C.W.D. Mo., 1942), 48 F. Supp. 542;

Austin v. *Southern Pac. Co.* (Cal. 1942) 50 C.A. (2d) 292, 123 P. (2d) 39;

Watson v. *Missouri-Kansas-Texas R. Co. of Texas* (Tex. Civ. App., 1943) 173 S.W. (2d) 357;

Texas and New Orleans R. Co. v. *McCombs* (Tex. 1944) 183 S.W. (2d) 716;

Evans v. *Louisville & N. R. Co.* (1940) 191 Ga. 395, 12 S.E. (2d) 611;

Delaware, Lackawanna & Western R. Co. v. *Slocum* (N. Y. Sup. Ct.), 183 Misc. 454, 50 N.Y.S. (2d) 313; (D.C. W.D.N.Y.) 56 F. Supp. 634; 269 App. Div. 467, 57 N.Y.S. (2d) 65; 274 App. Div. 950, 83 N.Y.S. (2d) 513; and 299 N.Y. 496, 87 N.E. (2d) 532 (1949).

Wooldridge v. *Denver and Rio Grande Western R. Co.* (1948) 118 Colo. 25, 191 P. (2d) 882;

Beeler v. *Chicago, Rock Island and Pac. Ry. Co.* (C.C.A. 10, 1948), 169 F. (2d) 557.

Shipley v. *Pittsburgh & L.E.R. Co.* (D.C.W.D. Pa., 1949), 83 F. Supp. 722.

justment Board. For in *Elgin, Joliet and Eastern Ry. Co.* v. *Burley*, 325 U. S. 711, 327 U. S. 661, it was held that the collective bargaining agent could act in the handling of claims under the applicable contract only to the extent authorized by the individual employees involved, and could bind them only to that extent. It necessarily follows that the petitioner as a representative of conductor employees is in no different position with respect to the election of remedies than was the individual employee involved in the *Moore Case.*

The respondent respectfully submits that the petitioner has failed to show that the South Carolina decision has misapplied the authoritative ruling of this Court in the *Moore Case.*

II.

The Decision of the South Carolina Court is Not in Conflict With Order of Railway Conductors v. Pitney, 326 U. S. 561.

During the proceedings in the South Carolina courts, as it does again in its petition to this Court (p. 16), the petitioner contended that the Railway Labor Act provides an exclusive remedy not only in "jurisdictional" disputes within the cognizance of the National Mediation Board; but also in those types of disputes which are referable to the National Railroad Adjustment Board. The first part of this contention is sound, but the latter part is equally as erroneous.

It is settled law that "jurisdictional" disputes involving representation questions that are referable to the National Mediation Board are outside the jurisdiction of the courts. *Switchmen's Union of North America* v. *National Mediation Board*, 320 U. S. 297; *General Committee, etc.* v. *Missouri-Kansas-Texas R. Co.*, 320 U. S. 323; *General Committee, etc.* v. *Southern Pacific Co.*, 320 U. S. 338. But there is no suggestion that this case involves such a representation dispute. It is a simple controversy over the interpre-

tation of a contract involving the question whether this respondent's employees are entitled to a second day's pay under the contract for a short period of work performed during the course of their regular day's service.

The court below did not misconstrue the *Pitney Case, supra,* when it said that the *Pitney Case* did not overrule or modify the decision in *Moore* v. *Illinois Central R. Co., supra.*

The petitioner's contention to the contrary is effectively and accurately answered in the opinion of the court below as follows: (R. 40-41).

> "The *Pitney case* involved primarily a suit for an injunction, and was complicated by the dual function of the court—first, as a court required to direct the receivers how to conduct the business of the railroad; and, second, as a court of equity required to determine if an injunction should issue to enjoin the receivers from violating Section 6 of the Railway Labor Act. The case was further complicated by a jurisdictional dispute requiring the interpretation of two collective bargaining agreements, which it was alleged, overlapped.
>
> "None of these conflicting features is present in the case now under consideration. In this case there is only one defendant, one contract, and one set of facts requiring the attention of the court in construing the agreement and disposing of the dispute. It might further be noted that the Supreme Court in the *Pitney case* did not hold that the Federal Court did not have jurisdiction. It merely held that in consideration of the complicated features of the case, the court should retain jurisdiction to stay action on the prayer for injunction in order to permit the parties to first have the two contracts interpreted by the administrative procedure provided in the Railway Labor Act. Nowhere in the opinion of the court do we find any reference made to the case of *Moore* v. *Illinois Central R. Co., supra.* If it had been the intention of the court to overrule the *Moore Case* which was decided in 1941, we think this would have been done in specific language."

A similar answer was made to petitioner's theory by the New York and Colorado courts in *Delaware, Lackawanna and Western R. Co.* v. *Slocum*, (1949) 299 N. Y. 496, 87 N. E. (2d) 532; and *Wooldridge* v. *Denver and Rio Grande Western R. Co.* (1948) 118 Colo. 25, 191 P. (2d) 882.

III.

There is No Substantial Conflict Between the Decisions of the State Courts and the Lower Federal Courts.

Petitioner is mistaken in saying that the lower federal courts have denied judicial power to adjudicate disputes of this nature and have held that the Adjustment Board provides the initial and primary remedy. All of the cases cited by petitioner (Petition, p. 11) are cases which followed the course suggested in the *Pitney Case, supra.* That the federal courts in those cases recognized that they had jurisdiction, but were merely exercising their discretion to give the parties an opportunity first to go to the Adjustment Board, is well demonstrated by the order entered by Judge Strum in the *Atlantic Coast Line Case* reproduced at page 27 of the Petition as follows:

> "1. The motion of Brotherhood of Locomotive Firemen and Enginemen (filed March 9, 1948) for leave to intervene is granted.
>
> 2. Plaintiff's prayer for declaratory judgment is denied. The cause is retained on the docket in order to afford the parties an opportunity to apply to the Railway Adjustment Board for an interpretation of the labor contracts involved, after which this Court will consider what, if any, duty rests upon it with respect to the controversy."

Of course, if the court had no jurisdiction, it could not have held the case on the docket. That the court might later proceed with the exercise of its jurisdiction without an Adjustment Board award is further demonstrated by what has happened in the case of *Missouri-Kansas-Texas R. Co.* v. *Randolph*, (CCA 8) 164 F. (2d) 4, one of the cases mis-

takenly relied on by petitioner. As directed by the Circuit Court of Appeals, the District Court exercised its *equitable discretion* to give the Adjustment Board the first opportunity to interpret the collective bargaining agreements involved. However, the plaintiffs were unsuccessful in receiving relief through the Adjustment Board, and the District Court on August 10, 1949 granted them leave to reopen the case upon the showing of the futile efforts resulting from the procedure outlined by the Court of Appeals. The opinion of the District Court for the Western District of Missouri which thus so clearly shows that the federal courts have always recognized their jurisdiction in these cases, but were merely exercising an equitable discretion to stay or delay action thereunder, is reported in 85 F. Supp. 846.

Shipley v. *Pittsburgh & L. E. R. Co.* (D. C. W. D. Pa.) 83 F. Supp. 722, is a recent example of the recognition of jurisdiction by federal courts in suits involving the interpretation of railroad collective bargaining contracts. There the suit was brought by a large group of railroad employees, including many conductors represented by petitioner here, claiming damages for breach of contract by the railroad defendant. In a carefully considered opinion rendered March 6, 1949, Judge Gourley held that the court had jurisdiction notwithstanding the remedy before the Adjustment Board, and, after interpreting the contract, made the necessary findings to dispose of the case.

It is respectfully submitted that it is thus shown that the lower federal courts are not in substantial conflict with the State courts on the proper interpretation and application of the Railway Labor Act. The only difference of opinion is as to the exercise of equitable discretion. Petitioner has not shown any abuse of discretion on the part of the courts below. On the contrary, there clearly was not any abuse of discretion by the South Carolina courts in this case. The declaratory judgment was granted only after a careful consideration of all the facts and in the light of the administrative remedy under the Railway Labor Act.

IV.

Petitioner Has Not Shown Any Departure From the Accepted and Usual Course of Judicial Proceedings as to Require a Review in the National Interest.

Petitioner argues in support of its application that the decision is of national importance, but fails to support the assertion beyond the unsupported statement that frequent intervention by state courts in disputes being progressed under the Railway Labor Act will inevitably invite industrial strife and interference with interstate commerce throughout the United States.

This is a strange position for the petitioner to take, for this decision is by no means novel. Not only has the jurisdiction of the courts been recognized ever since the passage of the Railway Labor Act, but since the decision in *Moore* v. *Illinois Central R. Co., supra*, it has been exercised by the courts, both federal and state, over and over again as shown above (p. 7). Moreover, South Carolina does not stand alone in approving declaratory judgment relief in these cases; it has been joined by New York, Colorado, and Texas, the only states that have considered the precise question. *Delaware, Lackawanna and Western* v. *Slocum*, (1949) 299 N. Y. 496, 87 N. E. (2d) 532; *Wooldridge* v. *Denver and Rio Grande Western R. Co.* (1948) 118 Colo. 25, 191 P. (2d) 882; *Denver and Rio Grande Western R. Co.* v. *Brotherhood of Railroad Trainmen*, decided by the State District Court of Denver, Colorado, November 18, 1948 (See Petition p. 24); and *Texas and Pacific Ry. Co.* v. *Brotherhood of Railroad Trainmen*, No. 07489, decided July 11, 1949 by the Texas District Court of Bowie County, Texas.*

In the long history of court intervention in matters pertaining to the interpretation of railroad collective bargaining contracts, petitioner points to no case where court ac-

* The pertinent Conclusions of Law are contained in a supplementary order filed on July 21, 1949, which is reproduced herein as an appendix.

tion has resulted in the "industrial strife and interference with interstate commerce," which petitioner professes to fear.

On the contrary, the only time when great industrial strife and interference with interstate commerce has occurred by reason of disputes like the one here involved, was the recent strike of operating personnel (including members of petitioner) on the Missouri Pacific System. The Court will take judicial notice that in that case strife and interference was the result of the refusal of the unions and their members to follow the orderly processes of the Railway Labor Act by submitting their cases to the Adjustment Board, which they are here so solicitously defending and espousing. That stoppage of interstate commerce in no way resulted from any court of competent jurisdiction attempting to exercise jurisdiction for the purpose of declaring the rights of the disputants under the applicable collective agreements.

The respondent submits that if there be dissatisfaction among the railroad unions because the courts exercise jurisdiction in these cases, the proper authority for them to appeal to is the Congress which has full power to amend the Railway Labor Act and make the administrative remedy exclusive if it deems that to be in the public interest. The courts, however, have no such power, and to grant the petitioner's application in this case will not serve any useful purpose.

Conclusion.

For all the reasons and upon the authorities above set out, we respectfully pray this Court to deny the petition.

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APPENDIX.

IN THE DISTRICT COURT OF BOWIE COUNTY, TEXAS,
102ND JUDICIAL DISTRICT.

No. 07489.

THE TEXAS AND PACIFIC RAILWAY COMPANY, ET AL.,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

Pursuant to the request of the plaintiffs under Rule 298, Rules of Civil Procedure of the State of Texas, made by said plaintiffs within five (5) days after the original Findings of Fact and Conclusions of Law were filed by the trial court with the Clerk thereof, the Court makes and files the following additional Conclusions of Law, to wit:

A.

I conclude, as a matter of law, that in dispute of the character involved in this suit, this Court, as a Court of general jurisdiction, has concurrent jurisdiction with the National Railroad Adjustment Board, to settle and adjudicate the same, and that since such dispute was filed in this Court before it was filed with the National Railroad Adjustment Board this Court has exclusive jurisdiction to try this cause, and to enter a declaratory judgment in respect of such dispute.

B.

I conclude, as a matter of law, that the number of persons constituting the class or craft of yardmen is so large as to make it impracticable to bring them all before the Court

in this proceeding, and that the defendants named in this suit fairly insure the adequate representation of all of said class or craft of yardmen, and that the facts and circumstances involved in this proceeding are the same with respect to the class or craft of yardmen employed by plaintiffs at Texarkana, Arkansas-Texas, as they are with respect to the defendants Hendrickson, Ellette, Goltra, Peters, Crudup and Richardson, and that there is a common question of law affecting the rights of said class or craft of yardmen and the parties named therein, and that a common relief is sought by plaintiffs, and based thereon, that the parties set forth in Paragraph III, of Defendants' First Amended Answer as being interested and not parties to said suit, are not necessary parties thereto.

C.

I further conclude, as a matter of law, that the plaintiffs are entitled to judgment as prayed for in Subdivisions 1, 4 and 5, of the prayer contained in Plaintiffs' Original Petition.

(Signed) H. L. DALBY,
Judge Presiding.

Dated: July 21, 1949.